

NEW WAYS TO WRITE LAWS

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NEARLY everyone complains about the obscurity of statutes. Grumblings have been heard spasmodically ever since Jeremy Bentham gave his "six remedies for long-windedness" in a book so long-winded that it is hardly ever read.¹ Several years ago a distinguished authority declared that draftsmanship had grown worse, on the whole, in the seven centuries since Magna Carta.²

There is no reason to conclude that the problem is insoluble. Now and then a draftsman with new ideas produces a statute of startling clarity. The reason why these instances are rare and sporadic is that most draftsmen see no compelling reason for making laws readable. Eminent writers like Freund³ and Horack⁴ have pleaded for a simpler style, but have not said why they want it. Other competent students of legislation have regarded readability as a matter of slight importance.⁵ The subject is barely touched in casebooks on legislation.⁶ Consequently most lawyers probably regard it as a matter of taste. Quite properly, they do not want to sacrifice a supposed juristic accuracy for the sake of mere literary grace.

This article is written in the belief that there are definite and positive goals to be attained by simpler statute-writing. There are definite

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1. BENTHAM, *NOMOGRAPHY, OR THE ART OF INDITING LAWS* in 3 BENTHAM, *WORKS* (Bowring's ed. 1843) 231-83. The chapter on remedies for longwindedness is at pages 264-5.

Bentham's style is exemplified by the title of his chapter on the lack of section titles and subtitles, which he called, "Nakedness in respect of helps to intellection." He advised draftsmen to use "abbreviative words," like maximize, minimize, demoralize, and disintellectualize (p. 265).

Some of the other landmarks in the history of the subject are COODE, *LEGISLATIVE EXPRESSION* (1848); STERNE, *THE PREVENTION OF DEFECTIVE AND SLIPSHOD LEGISLATION* (1884); JONES, *STATUTE LAW MAKING IN THE UNITED STATES* (1912); ILBERT, *THE MECHANICS OF LAW MAKING* (1914); and FREUND, *LEGISLATIVE DRAFTING* (1916).

Among the many contemporary writers who have agreed that laws should be more understandable are Cullen, *Mechanics of Statutory Revision* (1944) 24 ORE. L. REV. 1; Moseley, *Continuous Statute Research and Revision in North Carolina* (1944) 22 N. C. L. REV. 281.

2. THRING, *PRACTICAL LEGISLATION* (1902) 2.

3. FREUND, *LEGISLATIVE DRAFTING* (1916); FREUND, *LEGISLATIVE REGULATION* (1932) 190-5.

4. HORACK, *CASES AND MATERIALS ON LEGISLATION* (1940) *passim*; SUTHERLAND, *STATUTORY CONSTRUCTION* (Horack's 3d ed. 1940) *passim*.

5. See THRING, *PRACTICAL LEGISLATION* (1902); although he ridicules the "wordy cairns" of conveyancing (p. 2), he gives as a model a statutory sentence 161 words long (p. 32).

Professor Willard Hurst finds "arrangement and expression" of little interest for law teaching. Hurst, *The Content of Courses in Legislation* (1941) 8 U. OF CHI. L. REV. 280.

6. HORACK, *CASES AND MATERIALS ON LEGISLATION* (1940) contains several passing hints on legislative expression. There is little or nothing on the subject in the otherwise excellent materials of NUTTING (1939) and PARKINSON (1936).

techniques which will help in attaining these goals. When the goals and techniques are known to the profession, better laws will be written.

THE LAW AND THE LAW-MAKER

A law should be clear, first of all, to the law-makers who are called on to vote it into the statute books. This objective has naturally escaped notice in the past because of the assumption that the law is the word of the legislator. The assumption is daily reasserted in references to the "intent of the legislature."

As most people know when they stop to think about it, the man who actually writes the law is not usually a Senator or a Representative. He is a lawyer employed either by a government department or by a politically influential group of citizens which is trying to get the law passed. After it leaves the draftsman's hands, it passes through a hierarchy of officials (if government-sponsored) or of clients (if privately pushed) before it ever reaches the legislative chambers. The officials and clients are the people who know what the law is supposed to say, and in whose minds is born the "intention" behind the original choice of words. Only then does it reach a Congressional committee which is told what it later will be said to have "intended."⁷

Recently the writer attended a conference of government executives who argued gravely for half an hour about what Congress "intended" by a particular phrase. "Let's quit kidding," one of the conferees finally remarked. "This law was written around this very table, and most of us were here writing it."⁸

This fiction of legislative authorship is one of the principal obstacles to better drafting. For a draftsman seldom dares to think about how he would write the law if he had a free hand. He adopts the style in which earlier laws have been written, lest the words should fail to sound like the words of a legislature. This practice insures that laws will be

7. See, e.g., *Hearings before House Committee on the Judiciary on H. R. 4840*, 78th Cong., 2d Sess. (1944) 16:

Congressman Celler (in reference to a provision of a proposed bill): "That would include nationals of Italy, wouldn't it?"

Mr. Cutler (then Assistant General Counsel for the Alien Property Custodian, sponsor of the bill): "It would."

Congressman Celler: "Would it include nationals of Finland?"

Mr. Cutler: "No; the United States has not been at war with Finland." [Reads a passage referring to residents of enemy countries.]

Congressman Celler (interposing): "That is, whether they are a national or a resident?"

Mr. Cutler: "It refers only to citizens or subjects of enemy states in this subsection. To have no right to return, he must have been a citizen of an enemy country and have resided at some time since Pearl Harbor in enemy territory."

Congressman Celler: When you say "Within any [enemy] territory," does that mean territory, for example, that the Nazis have acquired, like Bulgaria and so on?"

8. In the days of Edward I, authorship was more openly avowed. "Do not gloss the statute," Justice Hengham admonished counsel, "for we know better than you, we made it." *Auymeye v. Anon*, Y. B. 33-35 Ed. I 82 (1305), as quoted in 2 SUTHERLAND, STATUTORY CONSTRUCTION (Horack's 3d ed. 1943) 202.

written in a style as ancient as the draftsman's learning permits. It is like the habit which made lawyers write pleadings in French and Latin long after these languages had ceased to be current.⁹

The jargon which results is not of course the language of present day Congressmen. Most of them probably feel more like Maury Maverick, who in his famous attack on "gobbledygook" threatened to shoot at sunrise any federal employee who should give him any more of it.¹⁰ The jargon has to be translated to Congressmen so that they can vote understandingly on the bills. Accordingly, a well-drawn committee report contains a full paraphrase of the statute, in shorter sentences and simpler terms, for the Congressmen to read.

A good example of the translation procedure can be found in the House Report on the recent Administrative Procedure Act. Since this Act is one of the more readable works of the Seventy-Ninth Congress, the difference between the official text and the paraphrase is not vast. It is just enough to indicate the difference between something meant to be read by lawmakers and something to be read by Supreme Court judges. A paragraph of the bill is given below on the left with its paraphrase on the right:¹¹

The Act

There shall preside at the taking of evidence (1) the agency, (2) one or more members of the body which comprises the agency, or (3) one or more examiners appointed as provided in this Act; but nothing in this Act shall be deemed to supersede the conduct of specified classes of proceedings in whole or in part by or before boards or other officers specially provided for by or designated pursuant to statute. The functions of all presiding officers and of officers participating in decisions in conformity with section 8 shall be conducted in an impartial manner.

The Paraphrase

The hearing must be held either by the agency, a member or members of the board which comprises it, one or more examiners, or other officers specially provided for in or designated pursuant to other statutes.

All presiding and deciding officers are to operate impartially.

9. See 2 HOLDSWORTH, HISTORY OF ENGLISH LAW (3d ed. 1923) 477-84. Holdsworth quotes an English statute of 1362 which complained that "the laws, customs, and statutes of this realm are not commonly known in the same realm, for that they be pleaded, showed, and judged in the French tongue, which is much unknown in the said realm, so that the people which do implead, or be impleaded in the king's court, and in the courts of others, have no knowledge nor understanding of that which is said for them or against them by their serjeants and other pleaders."

10. Maverick, *Gobbledygook* (1944) 4 PUB. ADM. REV. 151.

11. H. R. REP. NO. 1980, 79th Cong., 2d Sess. (1946) 4, 34.

Because of the system of obscure bills accompanied by simpler committee reports, there are usually two versions of each law that passes Congress. The draftsman likes to imagine that when the statute gets into court, the obscure official version will be applied by the judges, and the simpler paraphrase disregarded. But modern judges show a great inclination to disregard the official language and apply the version that Congress consciously agreed to.¹²

So the draftsman's subtlety ends by defeating itself. Instead of controlling judicial rulings by his artfully drawn clauses, he simply causes the judges to rely on the legislative record, over which he has less control. Opposing factions pack the legislative record with conflicting statements, each favoring a particular interpretation.¹³

A better way for the draftsman to approach his objectives would be to write the statute itself in language he expects a Congressman to read. There would then be no reason for committees to prepare a different text for law-makers to read, nor for judges to suppose that Congress-

12. See Radin, *Statutory Interpretation* (1930) 43 HARV. L. REV. 863. Some examples of judicial reference to legislative intention are given *infra* notes 32, 34, 36.

13. A recent example of conflicting legislative history is furnished by the Administrative Procedure Act, Pub. L. No. 404, 79th Cong., 2d Sess. (June 11, 1946). The Attorney General, anxious to show that the Act did not expand the right to judicial review, declared that the section on right to review "reflects existing law." His statement was printed in the Senate Report (SEN. REP. No. 752, 79th Cong., 1st Sess. (1945) 44), and read by Senator McCarran, sponsor of the bill, on the floor of the Senate (92 Cong. Rec., Mar. 12, 1946, at 2195).

Senator Austin, anxious to show that the Act broadened the right of review, induced Senator McCarran to assent to statements which were substantially contradictory, in this colloquy:

SENATOR AUSTIN. Is it not true that among the cases cited by the distinguished Senator were some in which no redress or no review was granted, solely because the statute did not provide for a review?

SENATOR McCARRAN. That is correct.

SENATOR AUSTIN. And is it not also true that . . . this bill is brought forward for the purpose of remedying that defect and providing a review to all persons who suffer a legal wrong or wrongs of the other categories mentioned?

SENATOR McCARRAN. That is true; the Senator is entirely correct in his statement. (92 Cong. Rec., Mar. 12, 1946, at 2195.)

In this passage, Senator Austin's statements are not directed to the question of whether the bill should be passed, but to building a legislative history to influence its interpretation after it should become law.

A less direct conflict exists between statements of the Attorney General and of Congressman Walter on statutes precluding judicial review. The former emphasized that a statute which does not in terms preclude review may "be interpreted as manifesting a congressional intention to preclude review." (SEN. REP. No. 752, 79th Cong., 1st Sess. (1945) 44). The latter contended that, "Legislative intent to forbid judicial review must be, if not specific and in terms, at least clear, convincing, and unmistakable. . . . The mere fact that Congress has not expressly provided for judicial review would be completely immaterial. . . ." (92 Cong. Rec., May 24, 1946, at 5759). Again, both the Attorney General and the Congressmen were packing the record of "legislative intent" rather than telling legislators how to vote.

men really understood the law to mean something it does not say. The statute itself should be as detailed, concrete, and simple as the writer would want to be if he were explaining the law personally to the men who are to vote on it.

So far, we have been discussing cases where the draftsman has been obscure because he was thinking of the judge who would interpret the law, and overlooked the Congressmen who must vote on it. There are also cases where the draftsman is thinking very much about the Congressmen and wants to prevent their discovering what is involved. Sir Courtenay Ilbert, former legislative counsel to the British Parliament, tells without embarrassment of an instance where he used this method in order to sidestep a stormy issue that was being saved for a later date.¹⁴

Examination of a 1941 amendment to the Trading with the Enemy Act¹⁵ suggests that an American draftsman was there trying the same thing. This was an amendment to section 5 of the Act, which had been used by the Treasury for control of foreign exchange transactions. Almost hidden in it was a long sentence giving the President powers to "vest" foreign property—a subject previously dealt with in another section of the Act, and under the more revealing term, "seize."¹⁶ Four years later, the government contended that this amendment had repealed by implication other sections of the Act that gave remedies to American citizens. The argument was plausible enough on the face of the statute, but the Supreme Court overruled it.¹⁷ Mr. Justice Burton, who had been a member of the Senate when the law was passed, wrote a long concurring opinion to explain that Congress meant to leave untouched the rights of citizens which other sections of the law protected.

THE LAW AND THE CITIZEN

The citizens who have to obey the laws—or possibly go to prison for their violations—have been even more neglected by draftsmen than have the legislators. A cursory examination of most laws is enough to persuade a reader that they can hardly be understood by the laymen who are bound by them. To this there may now be added a virtual demonstration.

A series of experiments by Dr. Rudolph Flesch has made it possible to determine quite definitely the readability of various kinds of writ-

14. ILBERT, *THE MECHANICS OF LAW MAKING* (1914) 19-22.

15. 55 STAT. 839 (1941), 50 U. S. C. App. § 5 (Supp. 1943).

16. *TRADING WITH THE ENEMY ACT*, § 7, 40 STAT. 411 (1917), 50 U. S. C. App. § 7 (1940). The precise effect of the amendment in question is ably debated by Dulles, *Vesting Powers of the Alien Property Custodian* (1943) 28 CORN. L. Q. 245, and Carlston, *Foreign Funds Control and Alien Property Custodian* (1945) 31 CORN. L. Q. 1.

17. *Markham v. Cabell*, 326 U. S. 404 (1945).

ing.¹⁸ Through tests of a large number of adult readers, he devised a scale for grading passages with scores running from zero upward. From 0 to 1, for example, is the level of comic strips, which can be easily read by people with a fifth grade education. From 3 to 4, which Dr. Flesch calls "standard," can be easily read by high school students. This is the level of *Readers' Digest* and *Time*. From 5 to 6 is the level of academic journals and quarterlies, which can be easily read by college graduates. Anything above 6, according to these observations, can be easily read by practically no one, and cannot be understood, even with effort, by most people who lack a college education.

On Dr. Flesch's scale, most statutes register a score over 10—several degrees above the comprehension of average college graduates. Since only about five percent of the population have a college education, laws are unintelligible to a large proportion of the people who are supposed to obey them. In fact, they are probably beyond the understanding of nearly everyone except the lawyers who make their living by interpreting them.

This state of affairs is not hard to explain. Bentham thought it arose because jurists would rather hang a man for his misdeeds than warn him in advance against committing them.¹⁹ But no such sinister explanation is necessary. The fact is that legal science has consisted in studying the effect of laws on the decision of appellate cases. Draftsmen schooled in this system naturally fix their eyes on the judge of the highest court.

It seems evident that there are tremendous advantages to be gained from writing laws so that citizens can understand them. We know that it would be impossible to police all the business enterprises in the country. The state cannot, for example, fine or enjoin each enterprise that follows any of the practices supposed to constitute "restraint of trade." If illegal practices are to cease, business men must be able to understand which of their practices are illegal. But the language of the Clayton Act is quite inadequate to inform the average business man that he must, for example, abandon basing-point pricing.²⁰

18. FLESCHE, *THE ART OF PLAIN TALK* (1946) 135-6. Dr. Flesch's observations were first reported in his *MARKS OF READABLE STYLE*, Contributions to Education No. 897 (Teachers' College, 1943).

19. 3 BENTHAM, *WORKS* (Bowring's ed. 1843) 237. A portion of one of Bentham's sentences on this point deserves reproduction: ". . . whosoever they be to whom it is a matter of satisfaction that men should be put to death in due course of law (and these, more especially among English judges and other English lawyers, are many), the greater the extent to which they can keep from each man's mind the knowledge of such portions of law to which, on pain of being put to death for disobedience, they are called upon to pay obedience, the greater the extent to which they can administer this satisfaction to their minds. . . ."

20. The Robinson-Patman amendment to the Clayton Act provides that "it shall be unlawful . . . to discriminate in price between different purchasers of commodities of like grade and quality. . . ." 49 STAT. 1526 (1936), 15 U. S. C. § 13 (1940). In 1945, the Su-

The advantages of making laws understandable was brought home most effectively to the Office of Price Administration, which started out to write its regulations in the strictest tradition of legalistic obscurity.²¹ It was soon embarrassed by a Supreme Court decision refusing to enjoin violations by a Washington department store which showed that it was employing twenty-eight clerks in an effort to apply the price regulations.²² Fortunately, Professor David F. Cavers had already persuaded the agency to try writing its regulations in a down-to-earth style²³ which some commentators called "pidgin English."²⁴ A large number of merchants, OPA concluded, were willing to obey the law if they knew what it was. But if they could not understand the regulations, they would run their businesses to suit themselves. What was true for OPA regulations is equally true for a great many statutes.

To the argument for intelligible laws, it is sometimes answered that citizens do not read laws anyway. Chicken thieves, for example, do not steal from ignorance of the larceny statutes. That argument is perfectly good for the class of common law crimes which merely codify the Ten Commandments. It is not true for the great mass of legislation which is on the statute books today. The immense business done by the loose leaf services shows how eager business men are to know what rules they must live by. A popular weekly, the *United States News*, has a regular feature called "News-Lines," telling readers what "you can" and what "you cannot" do under Washington's latest rulings.

It is also argued that citizens can go to lawyers to have laws inter-

preme Court decided that this language prohibits pricing on the basing point system. *Corn Products Refining Co. v. Federal Trade Commission*, 324 U. S. 726 (1945). The facts of the case indicate that the industry had continued to use basing point systems after passage of the Robinson-Patman Act in the honest belief that the statute did not forbid them. Compare Commissioner Lowell Mason, in *Manhattan Brewing Co.*, 3 C. C. H. 1946 Trade Reg. Rep. 12793, 12794: "Business men are entitled to know why Commissioners decide cases the way they do. . . . I shall try to write my opinions in plain English devoid of legal jargon."

21. Price Section Memorandum No. 3, Feb. 16, 1942, directed all lawyers to follow this model for the first section of each regulation:

"On and after February 16, 1942, regardless of any contract, agreement, lease or other obligation, no person shall sell or deliver second-hand bags, and no person shall buy or receive second-hand bags in the course of trade or business, at prices higher than the maximum prices set forth in Appendix A hereof, incorporated herein as Section 16; and no person shall agree, whether on condition that this Maximum Price Regulation No. — is thereafter amended or is thereafter determined by any court to be invalid or on any other condition or otherwise to do any of the foregoing; and no person shall offer, solicit or attempt to do any of the foregoing."

22. *Hecht Co. v. Bowles*, 321 U. S. 321 (1944).

23. Professor Cavers' memorandum on simplification was also circulated in the War Production Board, and in the Canadian Wartime Prices and Trade Board, but has unfortunately never been published.

24. See Beuscher, *Law-Taught Attitudes and Consumer Rationing* [1945] *Wis. L. Rev.* 63.

preted.²⁵ To this contention, it should be enough to reply that in fact many citizens do not. What is more important, they can not. A business man must make hundreds of decisions about competitive practice without waiting for opinions of his general counsel. If he cannot grasp the rule he is meant to follow, he will follow the rule that appeals to him and hope it is right.

Moreover, if a business man's lawyer can translate a law into terms that a business man can understand, a draftsman should be able to do the same. He will save time and expense for citizens when he does.

THE LAW AND THE PUBLIC OFFICIAL

Laws must also be read and understood by the public officials who have to apply them and enforce them. These are the only people concerned with a considerable portion of the statutory law—the portion that tells how the various departments of government shall be run, who shall appoint their employees, and what they shall be paid.

Public officials are also some of the most important readers of the other kinds of laws, which tell citizens what they must do and refrain from doing to keep out of court. Police, detectives, and inspectors have to know what conduct has been forbidden before they can crack down on violators. Officials who issue licenses and assess taxes have to understand the categories in which licenses should be granted and taxes imposed.

Many public officials have just as hard a time understanding statutes as do many citizens. That is one reason why they are bound to fasten on mechanical interpretations that irk the citizen or provoke needless litigation. It is also a reason why they apply their personal standards of justice instead of applying the law. Not infrequently, the results are better than if they tried to follow the letter of the law as they understand it.

It is only a partial solution to fill public offices with lawyers, or with men who have taken a night law course. Often the job needs a good accountant, an engineer, or a social worker. But if it gets the specialist it needs, it gets a man who has trouble understanding the laws. More often it gets a poorer specialist than it needs, or no specialist at all, in order to get a man who can make out the law or is willing to ignore it.

Neither is it a solution to provide every official with a legal adviser. The man who makes the decisions should not only be told the law; he should understand it.

THE LAW AND THE JUDGES

At last we reach the men for whom most laws are consciously written—the judges. When a draftsman labors over a nascent bill, it is the

25. See Carter, *The Provinces of the Written and the Unwritten Law* (1890) 24 *Am. L. Rev.* 1.

judge who is nearly always in his mind. Treatises and casebooks are filled with examples of how judges construed ill-fated laws in the past. These are the precedents which guide draftsmen in conceiving the ill-fated laws of the future.

The draftsman's preoccupation with the judge is evidenced in a hundred ways. Sometimes it appears in the form of the law, which says that taking money from the employer's coffer "shall be deemed" (by the judge, obviously) to be embezzlement, and that the malefactor "shall be punishable" (by the judge) with one to ten years' imprisonment. A draftsman who was thinking about influencing the conduct of citizens would tell them that "employees must not" take money from the coffer, and that if they do they "will be punished."

In other laws, concentration on the judge is evidenced more subtly, but just as surely. A sentence a page long, winding up in a string of provisos, is no tool for telling either citizens or officials what has been forbidden. It is a tool, the draftsman hopes, for putting the judge in a box where he can rule only one way.²⁶

One of the lesser reasons why this kind of drafting is bad is that the judge is the last man to read any statute. It must first be read by the legislators, and accepted by them. It must then be read, or exposed for reading, by citizens. If the law is understood and obeyed by the citizens, it need never be re-read by anyone else. If it is disobeyed, the public official has his turn at reading the law, deciding whether the citizen has disobeyed it, and catching him in the infraction.

Only after all these other stages have been passed does the law ordinarily come to the judge.²⁷ This alone is a reason for writing so that some of the earlier parties may comprehend.

To this argument, the traditional draftsman will respond that it does no good for legislators, citizens, and officials to comprehend if judges, in the end, will misconstrue. This response reveals the crux of the whole question, which is the peculiar views about judges that underlie traditional drafting. The judge, according to a widely held superstition, is a man determined to thwart the intention of legislators by twisting every sentence from its normal meaning. But if you tie each word firmly enough to the next one, according to this bit of scribes'

26. Some of the advocates of codification have urged it principally as a means of controlling the judge, and making his actions more predictable. See Morrow, *Louisiana Blueprint: Civilian Codification and Legal Method for State and Nation* (1943) 17 *TUL. L. REV.* 351, 537; Samuel, *The Codification of Law* (1943) 5 *U. OF TORONTO L. J.* 148. This is a reaction against the belief of Napoleonic times that codification would make professional interpretation unnecessary. But the objective of making judicial conduct more predictable is perfectly consistent with the objective of making law more available to laymen and lawyers alike. See Field, *Codification* (1886) 20 *AM. L. REV.* 1.

27. Declaratory judgment actions may bring the law up for interpretation before an infraction, but only if citizens have found its meaning doubtful.

lore, the judge cannot get out of the trap and must sentence the defendant.

Cases of a past century furnish some apparent examples of this kind of judicial conduct. There is the case of the English statute which prescribed a penalty—"if any person or persons shall wantonly and cruelly beat, abuse, or ill-treat any horse, mare, gelding, mule, ass, ox, cow, heifer, steer, sheep, or other cattle." A defendant was charged under this law with conducting a bull-fight. The judge let him off, ostensibly because "bull" was not in the list of animals, and the judge would not construe "other cattle" to include something not listed.²⁸

Then there is the judge who reversed a conviction for rape because the indictment concluded "against the peace and dignity of State," instead of "against the peace and dignity of *the* State." The constitution, the judge pointed out, required indictments to conclude in a certain form, and he was bound by the constitution.²⁹

A trial lawyer who lost an argument in a case like this would probably conclude that the judge had a bad breakfast, or that he enjoyed bull-fighting. But office lawyers prefer the conclusion that if lists were more complete and exceptions more explicit, the judges' conduct would become more predictable. So statutory style becomes (to paraphrase Lord Thring)³⁰ a wordy cairn, on which each practitioner must from time to time throw a new word, until the whole becomes a huge heap of unintelligibility.

In the battle of wits between apparently whimsical judges and ever more diligent draftsmen, victory went always to the judges. They had the last word. When *exclusio unius* would not work, *noscitur a sociis* could always be brought to play. Today, it is clear that judges are not prisoners of language and do not even pretend to be.³¹ *Markham v. Cabell*,³² recently decided by the Supreme Court, will illustrate. Markham, the Alien Property Custodian, had seized the property of an enemy national who owed money to Cabell. The law, enacted in World War I, permitted creditors to sue the Custodian, but added:

" . . . nor in any event shall a debt be allowed under this section unless it was owing to and owned by the claimant prior to October 6, 1917. . . ." ³³

28. *Ex parte Hill*, 3 C. & P. 225, 172 Eng. Rep. R. 397 (K. B. 1827).

29. *State v. Warner*, 220 Mo. 23, 119 S. W. 399 (1909); *State v. Campbell*, 210 Mo. 202, 109 S. W. 706 (1908); *State v. Skillman*, 209 Mo. 408, 107 S. W. 1071 (1908).

30. THRING, PRACTICAL LEGISLATION (1902) 2.

31. Modern judges do not like to think of themselves as mechanically applying rules of law. ". . . my plea," writes Judge Clark in a recent complaint against *Erie v. Tompkins*, "is for freedom for the federal judicial process to be judicial." Clark, *State Law in the Federal Courts* (1946) 55 YALE L. J. 267, 295.

32. 326 U. S. 404 (1945).

33. 42 STAT. 1511 (1923), 50 U. S. C. App. § 9e (1940).

Cabell's claim had arisen in 1941, and was obviously excluded by the language of the law. But the court, looking over the statute and its legislative history, ruled in favor of Cabell. It does not make sense, they said, to seize property in World War II and pay debts only if they existed before World War I.

Another indication of the same judicial trend is *McGhee v. United States*,³⁴ where an alien seaman sued for personal injuries sustained when his ship sank off North Africa. A statute gave him, ostensibly, the same rights as American seamen. American seamen were entitled to sue in the district of their residence or wherever the ship was found. This did the alien seaman no good since his residence was in a foreign country, and the ship (having been sunk) could not be found anywhere. The language of the statute was decidedly against him, but the Second Circuit Court of Appeals ruled in his favor.

"We cannot believe," said Judge Learned Hand, "that it was the intent of Congress . . . to keep the promise to the ear, only to break it to the hope."³⁵

This type of judicial behavior is not entirely new. It was in 1892 that the Supreme Court decided *Church of the Holy Trinity v. United States*.³⁶ The statute in that case forbade prepaying the passage of an immigrant employee. Holy Trinity Church had plainly violated the letter of the law by prepaying the passage of a British divine who was to be the church's pastor. The Supreme Court concluded, however, that the statute was intended to prevent glutting the market for low-wage labor, not to keep down the supply of professionals.

One may even question whether the judge who decided the case of the bull-fight³⁷ was quite as mechanical as he pretended to be. In modern terms, he might have said that he thought Parliament was contemplating the evil of animal beating; that he would want much clearer evidence to show that they meant to forbid sporting events. But it was easier to base his conclusion on a missing word, and so he chose that mechanical way out. To the thinking of that day, which took words more seriously than we do now, this was perhaps the more plausible justification.

Today, judges do not even pretend to make a mechanical application of the words of statutes. They much prefer to discover and apply the purposes of statutes. Under these circumstances, the concatenations of words which delighted old time draftsmen are worse than lost labor. They oblige the judges to guess at the main purpose of the law, instead of finding it clearly stated. They insure that the judges will look out-

34. 154 F. (2d) 101 (C. C. A. 2d, 1946).

35. *Id.* at 105.

36. 143 U. S. 457 (1892).

37. *Ex parte Hill*, 3 C. & P. 225, 172 Eng. Rep. R. 397 (K. B. 1827), cited *supra* note 28.

side, instead of inside, the law to find the rules they should apply to particular situations.

A RESTATEMENT OF OBJECTIVES

The tricks that make a law easy to understand are countless. Many of them are as subtle as the touches that make good style in essays, short stories, and every other kind of literary creation. What is essential is that the writer should really want his readers to understand what is commanded and what is forbidden by the law. His object is different from that treated in books on composition, which seek an appeal to the cultivated literary taste; they strive for a certain sophistication and subtlety which may mystify while it charms.

The law-writer's object is more like that of the man who writes directions on how to use a Kodak or how to operate a Burroughs calculator. He may be addressing a very alert and eager audience, but he wants to be understood with as little effort as possible. And he wants above all to prevent his reader from throwing down the directions in disgust.

How technical he will be should depend on his audience. A statute on judicial procedure may properly use phrases that lawyers alone can comprehend, and sentences as complex as those in legal treatises and law reviews.³⁸ But there is no excuse for using sentences which he would be ashamed to put in a bar association committee report, addressed to the same audience.

Postal regulations should be a good deal simpler. Here is an essentially good sentence from a recent law on what can be mailed:

"Pistols, revolvers, and other firearms capable of being concealed on the person . . . shall not be deposited in or carried by the mails. . . ." ³⁹

Laws on restraint of trade should be pitched to the reading level of average business men. The draftsman of a law like the Robinson-Patman Act should ask himself whether it would make a good circular to the buyers of a large merchandising organization like Sears Roebuck. If it would not, it is a poor device for inducing business men to change their ways of buying and selling.

Internal Revenue laws and regulations may be pitched to several different levels. Those which apply to small individual incomes need to be on a very simple level. The excess profits tax law, on the other hand, had every reason to be more complex; it would be used almost exclusively by accountants. But there was no excuse for writing it in

38. This article is not intended to be as simple as most statutes should be. It is meant for lawyers, while most laws are to be read by laymen.

39. 44 STAT. 1059 (1927), 18 U. S. C. § 361 (Supp. 1946).

such terms that a bulletin of several hundred pages had to be issued to tell the accountants how to apply it.⁴⁰ The text which the accountants could read should have been the text of the law.

While many of any draftsman's problems are unique, he has others which have confronted scores of draftsmen before him. For these, standard techniques can be evolved and copied from one law to another. Some of these problems are discussed in the paragraphs that follow.

WHAT THE ACT IS ABOUT

The first thing that any law-reader wants to know is what the law is about. Does it affect him or doesn't it? Most laws fail so utterly to answer this question that they are likely to be thrown in the waste basket before the reader even tries to decipher them.

A typical example is the Trading with the Enemy Act,⁴¹ which in time of war suddenly applies to tens of thousands of Americans. But if it came in the mail to an American who was about to send some money to a foreign creditor, he would have to parse two or three pages before he found out whether he was likely to be affected by it.

The first thing the citizen would notice is that the Act begins with section 2 (maybe section 1 got lost, he thinks).⁴² Section 2, which has

40. The document on which lawyers and accountants relied to calculate excess profits tax was the *Bulletin on Section 722 of the Internal Revenue Code* (Bureau of Internal Revenue, November 1944). It was prefaced with this caveat (p. ii): "This bulletin is issued primarily for the use of employees of the Bureau of Internal Revenue engaged in the administration of the provisions of section 722 of the Internal Revenue Code. It contains information from which taxpayers and their counsel may obtain the best indication of the current trend of official opinion in the administration of that section. Although it does not have the force or effect of a published ruling or of a Treasury decision, its provisions will guide the administrative officers engaged in the consideration of excess profits tax cases."

41. 40 STAT. 411 (1917), 50 U. S. C. App. §§ 1-31 (1940).

42. Draftsmen of current bills are divided about evenly on whether or not the first section of a statute should be marked "section 1." Pub. L. No. 454, 79th Cong., 2d Sess. (June 26, 1946) begins like this:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the 'Republic of the Philippines Military Assistance Act.'

"SEC. 2. Notwithstanding the provisions of any other law. . . ."

On the other hand, Pub. L. No. 485, 79th Cong., 2d Sess. (July 3, 1946) begins this way:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

"SECTION 1. This Act may be cited as the 'Philippine Property Act of 1946.'

"SEC. 2. There shall remain vested in the Government of the United States. . . ."

Apparently the statutes which get more drafting attention usually have a separate section 1, as do the Administrative Procedure Act and the Employment Act of 1946 passed by the last session. But both of these acts had earlier drafts in which the first section was unmarked.

When the statute is edited for the United States Code, its first section is always given a

no subtitle, contains a long list of definitions, starting with a half-page definition of "enemy."

Somewhere in the middle of the second page begins section 3, also with no subtitle. If the citizen is still looking, he will see—

That it shall be unlawful—

- (a) For any person in the United States, except with a license of the President, granted to such person, or to the enemy, or ally of enemy, as provided in this Act, to trade, either directly or indirectly, with, to, or from, or for, on account of, or on behalf of, or for the benefit of any other person. . . .

If he keeps on for a few lines more, and understands what he reads, he will at last find out what the law is about.

A better way to start a statute is suggested by the way OPA finally learned to open its price regulations. It learned by experience⁴³ to start them this way:

"This regulation fixes ceiling prices for sales by retailers of certain commodities."⁴⁴

The same approach could have been used in the Trading with the Enemy Act:

"This law applies to everyone in the United States who has any dealings with foreigners."

It could then have proceeded to explain what foreigners and what dealings were specifically affected.

Where an act is addressed chiefly to public officials, rather than to citizens, the important thing is to set out the moving purpose behind the statute. The Employment Act of 1946⁴⁵ (originally proposed as the *Full* Employment Act of 1945) starts with a declaration of the national "policy and responsibility" to provide for employment through free enterprise. This tells the purposes with which the later sections (which can never provide for all eventualities) should be carried out.

GUIDE LINES

Another simple means of enticing the reading public into the heart of a statute is to put headings on the various subdivisions. A citizen who tackles an official print of the Trading with the Enemy Act to find out which if any of its provisions affects him finds twenty-five

section number; e.g., 50 U. S. C. App. § 1 (1940). But the statutes at large, and the official government reprints circulated for information of the public, are in the original form.

43. See notes 21–3 *supra*.

44. Maximum Price Regulation 580, Retail Ceiling Prices for Certain Apparel and House Furnishings § 1a, 10 FED. REG. 3015 (1945).

45. Pub. L. No. 304, 79th Cong., 2d Sess. (Feb. 20, 1946).

pages of closely printed text unadorned by a single guide line.⁴⁶ If he runs over the introductory words of a series of sections, he finds these beginnings for the various paragraphs:

- "Be it enacted by the Senate and House of Representatives . . .
 SEC. 2. That the word 'enemy,' as used herein, shall be deemed . . .
 SEC. 3. That it shall be unlawful . . .
 SEC. 4. (a) Every enemy or ally of enemy insurance or reinsurance company, and every enemy or ally of enemy, doing business within the United States . . .
 SEC. 5. (a) That the President, if he shall find it compatible with the safety of the United States and with the successful prosecution of the war. . . ."

This sort of thing is so obviously unenlightening that no compilation of laws is ever published without the compiler adding boldface titles to the various sections in order to guide the reader around. The official United States Code⁴⁷ provides the following guideposts:

- "SEC. 1. *Designation of Act.*
 2. *Definitions*
 3. *Acts prohibited.*
 4. *Licenses to enemy or ally of enemy insurance or reinsurance companies; change of name; doing business in United States.*
 5. *Suspension of provisions relating to ally of enemy; regulation of transactions in foreign exchange of gold or silver."*

Compilers' headings are seldom carried below the main section headings, but occasional statutes carry useful captions down through the subsections and paragraphs. Internal Revenue legislation has been particularly forward in this direction, as in the following example:⁴⁸

- "*Tax on transportation of persons, etc.—*
 (a) *Transportation.*
 . . .
 (f) *Exemptions.*
 (1) *Governmental exemption.*
 . . .
 (2) *Exemption of members of military and naval service."*

The technique to which the Bureau of Internal Revenue has been driven by its thousands of statutory sections would be no less useful in a great many smaller legislative masses. Yet the great majority of bills entering the legislative hopper, and of statutes leaving it, are as devoid of subdivision headings as the Trading with the Enemy Act of 1917.

46. 40 STAT. 411 (1917), 50 U. S. C. App. § 1 *et seq.* (1940).

47. 50 U. S. C. App. §§ 1-5 (1940).

48. 26 U. S. C. § 3469 (Supp. 1946).

CUTTING OUT THE JARGON

One of the things that annoys readers in legal writing is the tireless repetition of words that do not need to be repeated. "Such," "aforesaid," and "hereinbefore" are the most familiar offenders.⁴⁹

The argument for them is that they eliminate any possible doubt that the person meant is the same one who was meant before. But it is quite certain that people read stories, articles, and even legal treatises which are not filled with "such," "aforesaid," and "hereinbefore." They do not misunderstand. Laymen find legal documents hard to read precisely because of this strenuous struggle against ambiguity. The only justification for these terms is the myth about the perverse judge who will misinterpret the law by pretending to misunderstand it. Once we have decided that we have to trust the judge anyway, we can do away with these backward-looking modifiers. When we mean the same person as before, we can simply say "*the person*."⁵⁰

"Such" and its companions can be got rid of simply by dropping them. A slightly harder problem is presented when the law-writer has to use two or three different terms, and finds himself repeating them again and again like leit-motifs in a Wagnerian opera. Here is an example of this fault, with one of the recurrent themes put in italics, and the other in capitals:

"Any requirement made pursuant to this Act, or a duly certified copy thereof, may be *filed, registered, or recorded* in any office for the *filing, registering, or recording* of CONVEYANCES, TRANSFERS, OR ASSIGNMENTS of any such property or rights as may be covered by such requirement (including the proper office for *filing, registering, or recording* CONVEYANCES, TRANSFERS, OR ASSIGNMENTS of patents, copyrights, trade-marks, or any rights therein or any other rights); and if so *filed, registered, or recorded* shall import the same notice and have the same force and effect as a duly executed CONVEYANCE, TRANSFER, OR ASSIGNMENT to the Alien Property Custodian so *filed, registered, or recorded*."⁵¹

This paragraph could have been written as follows:

"Any order under this Act, or a certified copy of it, may be filed in any office for the filing of other transfers of the same kind of prop-

49. An interesting British attack on "word-fetishism" in legal drafting is Williams, *Language and the Law* (1945) 61 L. Q. REV. 71, 179, 293. See also Editorial, "*Said*" (1946) 32 A. B. A. J. 344; Armstrong, Book Review (1946) 32 A. B. A. J. 472.

50. Very few of these legalisms are found in carefully drafted contemporary statutes like the Administrative Procedure Act and the Employment Act of 1946. But they abound in the routine bills of minor importance. The same is true of the habit of starting every section of a bill with the word "that." The "thats" are carefully stricken out of the sections when edited for the United States Code.

51. TRADING WITH THE ENEMY ACT, 40 STAT. 1020 (1918), 50 U. S. C., App. § 7c (1940).

erty. The effect will be the same as for any other transfer. 'Filing' includes registering and recording; 'transfers' include conveyances and assignments; 'property' includes patents, copyrights and trademarks."

SHORT SENTENCES

One of the hardest things for a lawyer to do is to write short sentences. Here is an example of a lawyer-like sentence, from an OPA regulation on work clothing:

"Any tax upon, and incident to, the sale or delivery of staple work clothing, imposed by any statute of the United States or statute or ordinance of any state or subdivision thereof, shall be treated as follows in determining the seller's maximum prices for staple work clothing, and in preparing the records of such seller with respect thereto:

(2) In all other cases, if, at the time the seller determines his maximum price, the statute or ordinance imposing such tax does not prohibit the seller from stating and collecting the tax separately from the purchase price, and the seller does state it separately, the seller may collect, in addition to the maximum price, the amount of the tax actually paid by him or an amount equal to the amount of tax paid by any prior vendor and separately stated and collected from the seller by the vendor from whom he purchased and in such case the seller shall not include such amount in determining the maximum price under this Maximum Price Regulation No. 208."⁵²

Here is how OPA wrote a similar provision after it had decided it wanted citizens to understand:

"The ceiling prices determined under the pricing rules in section 7 are your ceiling prices exclusive of tax. If the tax law permits the tax to be separately stated, you may charge or collect the tax on the sale or delivery of the article in addition to the ceiling price fixed under the pricing rules: *Provided*, that you state the tax separately. This applies, however, only to a tax on a particular sale or delivery such as a sales tax or a compensating use tax. You may separately state the tax by any method you choose, except that the Retail Federal Excise Tax on fur-trimmed articles and certain items of leather goods and other articles imposed by the Revenue Act of 1943 must be stated as provided in Supplementary Order 85."⁵³

Some of the explanation for the failings of the earlier draftsman lies in the same old story. He was thinking of some judge who might let off a chiseler if there were any break between the idea that the tax could be

52. Maximum Price Regulation 208, § 1389. 209, 7 FED. REG. 6652 (1942).

53. Maximum Price Regulation 580, § 14, 10 FED. REG. 3019 (1945).

added and the restriction to special kinds of taxes. He was not thinking at all about the country storekeeper who would have to make sense out of the whole provision.

But the principal explanation for lawyers' labyrinthian sentences is more ironic. It is their passion for brevity. Most sentences start short, and grow longer as each member of a legislative committee adds ideas. After a couple of additions, the sentence needs to be split into two. Any draftsman would split it in a letter, but not in a statute, because that would make him repeat the subject and verb. The statute appears to take less space in one sentence than in two.

What the draftsman forgets is that the reason for brevity is to avoid tiring the reader. Most readers find one sentence of eighty words more tiring than five with twenty each. The thing to keep down is not the number of lines of type, but the reading time. The easier the style, as *Readers' Digest* knows, the shorter the reading time.

GIVING EXAMPLES

Another tradition which discourages citizens from reading laws is the draftsman's habit of describing his subject in the least specific terms he can find. An example of this approach is furnished by a bill in the last Congress which provided,

"That hereafter, except as otherwise specially provided by Act of Congress, no action for the recovery of wages, penalties or other damages, actual or exemplary, pursuant to any law of the United States shall be maintained in any court unless the same was commenced within one year after such cause of action accrued: . . ." ⁵⁴

The only way a lawyer can know whether the one-year limitation of this law applies is to search the United States Code from stem to stern: If he can't find a limitation anywhere else, then this is it.

A catch-all limitation may be a good thing, just to cover the unknown and forgotten cases. But this wasn't that kind of a law. The draftsman knew precisely what actions he wanted to limit, and he listed them, with citation, in the Committee report. If he had listed them in the statute, he would have saved hours of research for thousands of lawyers. Why didn't he? Possibly he prided himself on the brevity of his product, occupying a minimum of space in the Statutes-at-Large, but consuming a maximum of other lawyers' time and making it likely that some would be misled until, on an appeal, a more resourceful opponent produced the Committee Report and showed what the legislators really "intended." More likely, he did not think at all. He simply followed the legal tradition of using vague, general terms instead of specific ones. If the draftsman had wanted to enlighten his reader, he would have written—

54. H. R. REP. NO. 1141, 79th Cong., 1st Sess. (1945).

"The following actions must be brought within one year after the cause of action accrued:

- (1) Suits for treble damages based on infringement of a registered trademark (17 U.S.C., § 25);
- (2) Suits based on infringement of copyrights (17 U. S. C., § 25);"

and so on down the list.

Later in the same bill occurs another provision of unenlightening vagueness:

"Provided further, That no liability shall be predicated in any case on any act done or omitted in good faith in accord with any regulation, order, or administrative interpretation or practice, notwithstanding that such regulation, order, interpretation, or practice may, after such act or omission, be amended, rescinded, or be determined by judicial authority to be invalid or of no effect."

No doubt a lawyer can sit down and figure out some of the situations to which this provision might apply, but they are not immediately evident. A layman would be unlikely to figure them out at all.

The reason for leaving the reader in the dark is not the difficulty in explaining the situations, for they were very lucidly set forth in the Committee Report:

"A good illustration arises from the operation of the Fair Labor Standards Act. An employer who violates the provisions of this law relating to wages or hours may be subjected to suit for twice the amount involved together with costs and attorney fees. The application of this law has been greatly extended by administrative regulations. As a result an employer who may have, in good faith, relied upon a certain ruling, regulation, or practice, suddenly finds himself confronted with many suits, when a change is made either by the Administrator or by the courts. The enforcement of this new liability dating back to the enactment of the law would in many cases bankrupt the employer." ⁵⁵

This problem cannot be solved, like the preceding one, by listing the situations where the law applies, because they are innumerable. If the draftsman were to say "no liability shall be predicated in the following situations—," and list only some of them, he would run the danger of implying that it does exist in the other situations.

But there is a simple solution. Give an example and call it an example. Below is a passage from an OPA regulation where a hard-to-read legal provision is given concreteness by an illustration of how it works:

55. *Id.* at 4.

“Rule 3: . . . If the article you are pricing has a net cost lower than the lowest net cost listed for that category in column 2 of your chart, you figure your maximum price by applying to the net cost of the article the percentage markup listed in column 4 for the lowest net cost shown for that category.

*Example 6: You wish to price a girl’s sweater costing \$1.94 net. The lowest net cost which you have listed for category 208 is \$2.07, for which you have a listed percentage markup of 55.6%. Therefore your maximum price is \$3.02. ($1.94 \times 0.556 = \1.079; $\$1.94 + \$1.079 = \$3.019$.)”*⁵⁶

The rule of law is hard reading; with the example, a merchant can see what it means. If examples can be used in regulations, which have the force of law, they can also be used in statutes. When they are, many more citizens will understand the law.

GIVING DIRECTIONS

Law-writers are usually talking about who shall go to jail, and what epithet shall be applied to him. “Every person who shall do such and such shall be deemed guilty of a misdemeanor and shall be punishable. . . .” Or else they seem to be engaged in making preposterous predictions like “No person shall make any agreement. . . .”

What the citizen wants to know is not how to get in jail but how to stay out. It seems more logical to him to say “Persons must not do such and such.” This is the style of the Ten Commandments, which are good examples of direct speech to the common citizen.

In complex laws, this oblique approach of the law-writer is a real obstacle to understanding. Consider, for example, the confusion of the ordinary taxpayer if he had to figure out his income tax by reading the Internal Revenue Code and regulations. Fortunately, he does not even attempt it. He reads the form and the instructions. And this is all the Bureau of Internal Revenue expects him to do.⁵⁷

Since that is what the Bureau expects, a sensible internal revenue law would ask him to do just that: “Every person who received more than \$500 in a year, and not more than \$3000, must fill out form 1041 A, according to the instructions that go with it. He must also pay the tax which is shown by the form, when properly completed. Form 1041 A for 1947 is as follows. . . .”

Any criminal code contains examples of both types of laws—those which tell the judge what he should think about it if a man is brought before him charged with certain acts, and those which tell the citizen what acts he must refrain from doing.

Here is an example of the first method:

56. Maximum Price Regulation 580, § 7c, 10 FED. REG. 3017 (1945).

57. The writer was refused copies of the Treasury Regulations until he persuaded the clerk that he was a lawyer or accountant.

"Whoever shall enter, remain in, leave, or commit any act in any military area or military zone . . . shall, . . . be guilty of a misdemeanor and upon conviction shall be liable to a fine. . . ." ⁵⁸

This tells what a law lecturer would presumably want to know about a crime—what it is called, and when a man is guilty of it.

"Pistols, revolvers, and other firearms capable of being concealed on the person . . . shall not be deposited in or carried by the mails. . . ." ⁵⁹

This tells the citizen what he is not to do.

The former approach illustrates another habit of draftsmanship which reveals the workings of the draftsman's mind. He is not thinking about telling the citizen what not to do, but about telling the judge what to do with the offending citizen.

MATHEMATICS IN LAW

Speaking the reader's language does not always mean using a primer style. It means using the style that will be best understood, considering the kind of readers and the kind of ideas which must be presented.

So far, we have been talking about kinds of sentences. But sometimes sentences are not the best way to present the kind of material at hand. When material is largely mathematical, it should be presented in tables and formulas.

Consider, for example, two ways of setting out the tax rates. Before 1942, surtax rates were stated in this cumbrous way:

"\$80 upon surtax net incomes of \$6,000; and upon surtax net incomes in excess of \$6,000 and not in excess of \$8,000, 5 per centum in addition of such excess.

\$180 upon surtax net incomes of \$8,000; and upon surtax net incomes in excess of \$8,000 and not in excess of \$10,000, 6 per centum in addition of such excess." ⁶⁰

Obviously this is the kind of information which anybody but a law-writer would have put in a table. In 1942, when the Bureau first went in seriously for tax simplification, it adopted a semi-tabular presentation, far easier to follow, like this:

IF THE SURTAX NET INCOME IS:	THE SURTAX SHALL BE:
Over \$4,000 but not over \$6,000. . . .	\$580, plus 20% of excess over \$4,000.
Over \$6,000 but not over \$8,000. . . .	\$980, plus 24% of excess over \$6,000. ⁶¹

58. 56 STAT. 173 (1942), 18 U. S. C. § 97a (Supp. 1946).

59. 44 STAT. 1059 (1927) 18 U. S. C. § 361 (Supp. 1946).

60. REVENUE ACT OF 1938, 52 STAT. 447 (1938), 26 U. S. C. § 12b (1940).

61. REVENUE ACT OF 1942, 56 STAT. 798 (1942), 26 U. S. C. § 12b (Supp. 1943).

In the same year, a completely tabular presentation was adopted for the new optional tax on incomes of \$3000 and under, in this manner:

IF THE GROSS INCOME IS OVER—	BUT NOT OVER—	THE TAX SHALL BE—		
		SINGLE PERSON (NOT HEAD OF A FAMILY)	MARRIED PERSON MAK- ING SEPARATE RETURN	(1) MARRIED PERSON WHOSE SPOUSE HAS NO GROSS IN- COME OR (2) MARRIED PERSON MAK- ING JOINT RETURN OR (3) HEAD OF A FAMILY
\$600.....	\$625	\$11	\$0	\$0
\$625.....	650	15	0	0
\$650.....	675	20	3	0 ⁶²

Although the Bureau of Internal Revenue has outdistanced other law-writing departments in adapting its technique to its problems, many of its opportunities for improvement have remained untouched. It continues to use sentences to describe mathematical calculations which anyone else would describe by formula. For example, it provides that a shareholder in a holding company must include in his gross income

“ . . . the amount he would have received as a dividend if on such last day there had been distributed by the company, and received by the shareholders, an amount which bears the same ratio to the undistributed Supplement P net income of the company for the taxable year as the portion of such taxable year up to and including such last day bears to the entire taxable year.”⁶³

This passage requires a calculation which no one but a statutory draftsman would ever think of writing out in this way. This is hard reading for anybody. It can be handled in a number of ways, depending on who is the reading class.

If the readers are miscellaneous laymen, like those who file individual income tax returns, the only thing to do is to make a form with directions like this:

62. 56 STAT. 802 (1942) § 104 (a), 26 U. S. C. § 400 (Supp. 1943).

63. 53 STAT. 96 (1939), 26 U. S. C. § 337b (1940).

- Line 11. Enter the number of days from the beginning of
the taxable year to the "last day" named above
- Line 12. Divide the number in line 11 by 365, and enter the
result here

and so on.

But this particular section will be used only by bookkeepers and accountants, so the draftsman could have said more briefly:

The taxpayer must include in his gross income an amount A which he calculates as follows:

- (1) Find the fraction of the entire taxable year which had elapsed on the "last day" described above, and call it f .
- (2) Find the undistributed supplement P net income of the company for the entire taxable year, and call it P .
- (3) Multiply f times P . The product is the amount A .

THE REST OF THE JOB

Knowing how to write readable laws will not make citizens read laws. It will only open the way for other changes which must be made before the goal is reached.

For one thing, the job of law-writing must be delegated. It is a specialty, as good journalism is a specialty. The effect of a group of legislators amending a law around a table is the same as the effect of a lot of executives amending an advertising slogan around a table. They should make their suggestions, but the job of working them into the product should be left to the specialist.⁶⁴

This does not mean that law-making must be delegated. The same thing happens in administrative agencies as in legislatures when policy-making officials take over the writer's pen. It means that amendments by law-makers should be directions to the draftsman, and the draftsman should knit them into the law or regulation.

After laws are written, they must be publicized. It is not enough to put laws in a statute book where a diligent attorney, aided (when the law is months or years old) by a compiler's index, may discover them. Ways must be found of bringing them to the attention of the people who are supposed to obey them.

Administrative agencies usually recognize this need. They send out

64. ILBERT, *THE MECHANICS OF LAW MAKING* (1913) 14 quotes the following from Sir Frederick Pollock: "Many an Act of Parliament, originally prepared with the greatest care and skill, and introduced under the most favourable circumstances, does not become law till it has been made a thing of shreds and patches hardly recognisable by its author, and to any one with an eye for the clothing of ideas in comely words no less ludicrous an object than the ragged pilgrims described by Bunyan: 'They go not uprightly, but all awry with their feet; one shoe goes inward, another outward, and their hosen out behind; there a rag and there a rent, to the disparagement of their Lord.' "

bulletins to all the classes of citizens who are supposed to be affected. But laws of Congress and of state legislatures are left to the caprices of newspaper editors, where their chance of presentation depends on the amount of competition offered by the day's more exciting headlines.

Laws also need to be made in separable parts. The citizen does not need to know all about the make-up of an administrative commission or the frequency with which reports must be submitted to Congress. He needs to know what is compelled and what is forbidden. If he has to sort this out from all the rest, he will probably never read it at all. OPA made some useful experiments in separating what the citizen needs to have at hand and what he does not.⁶⁵ The same thing should be tried with laws of Congress.

At the same time, laws need to be consolidated. Related laws should be combined, duplications eliminated, and all put in better order.⁶⁶ The present mass of statutes is almost as forbidding as the mass of cases which, a century ago, awoke the drive for codification of the unwritten law. Today it is the written law itself that needs to be codified.

CONCLUSION

Laws should be written with more emphasis on making readers understand what the law commands, and with less emphasis on controlling the judges by rigid grammatical constructions. Judges are more likely to be controlled by clear statements of purpose.

Many ways of making laws more readable are already in use. They should be brought into the open, to be more widely adopted if valid and abandoned if unsound. The law needs a literature on how to write laws that is not contained in present treatises on statutory interpretation.

65. See Dickerson, *FPR No. 1, An Experiment in Standardized and Prefabricated Law* (1945) 13 U. OF CHI. L. REV. 90.

66. See Wright, *Revision of Federal Criminal Laws* (1945) 33 GEO. L. J. 194, 199-200.